

# **Special hearing will determine if Olympia man could have used medical necessity as defense**

## **Special hearing will determine if Olympia man could have used medical necessity as defense in trial**

By JEREMY PAWLOSKI

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William Kurtz

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In early 2014, a 62-year-old Olympia man with a chronic neurological disorder will continue to fight his 2010 felony conviction for growing marijuana.

In September, in a 5-4 decision, the Washington Supreme Court ruled that Thurston County Superior Court Judge Carol Murphy erred during William Kurtz's 2010 trial, because she did not consider whether the evidence supported Kurtz's proposed "medical necessity" defense.

The prosecutor during Kurtz's 2010 jury trial, Scott Jackson, argued that Kurtz was not entitled to present the defense, because Kurtz did not have a medical-marijuana authorization card when narcotics detectives found 42 growing marijuana plants and packaged marijuana in his home in the 11000 block of Champion Drive SW, near Scott Lake.

The Supreme Court disagreed with that argument, and stated that a Thurston County Superior Court judge must now hold a hearing "to determine whether Kurtz presented sufficient evidence to support a medical necessity defense," according to its majority opinion.

The Supreme Court did not vacate Kurtz's conviction, but stated that the Superior Court must now decide whether the evidence supports Kurtz being allowed to present the "medical necessity" defense. It must determine if such a defense is an alternative to already having a medical marijuana authorization card.

"If the evidence supports the necessity defense, Kurtz is entitled to a new trial," reads the Supreme Court's majority opinion.

Kurtz appeared in an Olympia courtroom this month, along with a large contingent of supporters, for a scheduling conference.

Murphy fined Kurtz \$4,000, but did not require him to serve any jail time.

During the scheduling conference, a judge ordered another hearing for late January, when attorneys will decide on when to hold the evidentiary hearing required by the Supreme Court.

Kurtz, who uses a wheelchair, said he is diagnosed with familial spastic paraparesis and has a signed letter from an Olympia physician confirming the medical condition.

During Kurtz's sentencing hearing, prosecutor Jackson said there was no evidence that Kurtz was selling the marijuana he grew at his home.

Outside court Dec. 12, Kurtz decried the Thurston County Prosecuting Attorney's Office for continuing to prosecute his case.

"Prosecution turns into persecution, and this is a perfect example of it," Kurtz said. "... I'm sorry, enough's enough."

Since the start of 2013, possession of less than an ounce of marijuana has been legal for adults over 21 in Washington. Washington also has medical marijuana authorizations.

Thurston County Chief Criminal Deputy Prosecuting Attorney Andrew Toynbee said last week his office is merely doing what the Supreme Court has directed it to do - hold another hearing.

Toynbee noted that Kurtz's conviction has not yet been vacated. "I don't know that that's an option," Toynbee said of ending prosecution.

The prosecutor's office has not yet decided what it will do if a Thurston County Superior Court judge vacates or sets aside Kurtz's conviction and calls for a new trial, Toynbee said. The prosecutor's office could retry him or dismiss the case.

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